IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-TA-158

Muir Woods Section One Association, Inc., Muir Woods, Inc., Spruce Knoll Homeowners Association, Inc., and Oakmont Homeowners Association, Inc.,
Petitioners,

–v–

Marion County Assessor, Joseph P. O'Connor,
Respondent.

Argued: June 24, 2021 | Decided: August 26, 2021

On Petition for Review from the Indiana Tax Court
No. 19T-TA-25
The Honorable Martha Blood Wentworth, Judge

Opinion by Justice David

Chief Justice Rush and Justices Massa, Slaughter, and Goff concur.

David, Justice.

Generally speaking, the valuation and assessment of real property in Indiana is an inherently subjective exercise. Over time, multiple avenues have been made available to Hoosier taxpayers to challenge a property's assessed value.

The present dispute turns on unique circumstances involving the use of a now-defunct tax appeal form challenging assessments to certain homeowners' association lands for the years 2001, 2002, and 2003. Under the facts of this case, we find the use of the form was proper and remand this matter for further proceedings.

Facts and Procedural History

Petitioners Muir Woods Section One Association, Inc., Muir Woods, Inc., Spruce Knoll Homeowners Association, Inc., and Oakmont Homeowners Association, Inc., are all homeowners' associations ("HOAs") located in Marion County. In 2014, the HOAs filed 141 "Petitions for Correction of an Error" ("Form 133") alleging property tax assessments from the years 2001, 2002, and 2003 were illegal as a matter of law because certain common areas of the HOAs' properties were so encumbered by restrictions that the land had zero value. The Marion County Property Tax Assessment Board of Appeals denied all of the Forms 133 on the basis that they were untimely filed.

The Indiana Board of Tax Review ("Board") approved the HOAs' request that all of their Forms 133 be consolidated into a single Form 133. In addition to the zero value argument, the HOAs' consolidated Form 133 also alleged that the land assessments were levied against the wrong person, that resulting tax liabilities were charged more than once in the same year, and that the Marion County Assessor failed to apply a certain base rate discount when calculating the properties' assessed values. The HOAs later amended their petition to indicate their reliance on a property tax exemption for common areas grounded in Indiana Code section 6-1.1-10-37.5.

The Assessor filed a motion to dismiss, arguing the HOAs' alleged errors could not be corrected using Form 133. The Board issued a final determination on June 13, 2019, granting the Assessor's motion. The Board reasoned that Form 133 was an improper way to appeal each of the HOAs' claims because those questions all went "to the inherently subjective question of how their properties should have been valued..." App. Vol. 2, pp. 31-32.

On appeal, the Tax Court affirmed in part and reversed in part. *Muir Woods Section One Assn., et al. v. Marion Cty. Assessor*, 154 N.E.3d 877, 883 (Ind. Tax Ct. 2020), *reh'g denied*. The Tax Court found first that "the Exemption Statute clearly indicate[s] that the HOAs' claim was not proper for a Form 133," and second that the Assessor's alleged failure to apply a discount prescribed in certain land order and assessment guidelines was an inherently subjective judgment and therefore the Tax Board did not err in dismissing the HOAs claim. *Id.* at 882. However, the court remanded the matter to the Tax Board finding that the HOAs' allegation that property taxes had been imposed more than once for the same year was capable of correction via Form 133 because it could be corrected by observing objective facts. *Id.* at 882-83.

We granted the HOAs' petition for review and now reverse in part, summarily affirm in part, and remand to the Board of Tax Review for further proceedings.

Standard of Review

When reviewing a decision of the Tax Court, we give "cautious deference" to its specialized expertise and reverse only when "we are definitely and firmly convinced that an error was made." *Merch. Warehouse Co. v. Indiana Dep't of State Revenue*, 87 N.E.3d 12, 16 (Ind. 2017) (quoting *Ind. Dep't of Revenue v. Miller Brewing Co.*, 975 N.E.2d 800, 803 (Ind. 2012)). However, to the extent the Tax Court's opinion "turns upon the plain meaning of an unambiguous statute," we give no deference to the Tax Court's interpretation. *Id.* (citation omitted).

Discussion and Decision

The HOAs focus our review on whether the Assessor's common area land value determinations were objectively erroneous in violation of the 1995 Marion County Land Order ("Order") for the year 2001 and the Residential Neighborhood Valuation Forms used for the years 2002 and 2003. Stated differently, the HOAs contend that the Assessor's failure to apply these provisions hinges on an inherently objective factor such that it can properly be challenged by Form 133. We agree.

Historically, one way in which a taxpayer could challenge a property tax assessment was by filing a Form 133. *Lake Cty. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 2005); *see also Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax. Ct. 2015) (citing Ind. Code § 6-1.1-15-12 (2009) (repealed 2017)). When Form 133 was in use, it could only be used to remedy "errors which can be corrected without resort to subjective judgment and according to objective standards." *Muir Woods Inc.*, 36 N.E.3d at 1213. When the HOAs filed the present lawsuit, Indiana law required that a county auditor correct errors if, among other things, "[t]he taxes, as a matter of law, were illegal," "[t]here was a mathematical error in computing an assessment," and/or "[t]hrough an error of omission by any state or county officer, the taxpayer was not given…" certain credits, exemptions, or deductions permitted by law. Ind. Code § 6-1.1-15-12(a)(6)-(8) (2011) (repealed 2017).

Here, the HOAs argue that the 2001, 2002, and 2003 property tax assessments of and resulting liabilities on the HOAs' common land area were illegal. The aforementioned Order was used to establish base rates for land in Marion County and was promulgated by the State Board of Tax Commissioners. Once a base rate was determined under this Order, homeowners' association land was to be valued at "[twenty percent] of [the] base rate applied to the specific geographic area," or, as the HOAs frame it, an eighty percent discount of the applicable base rate. App. Vol. 4, p. 212. Similarly, valuation forms used in 2002-2003 for Muir Woods

and Spruce Knoll contained notes applying a twenty percent of base rate discount to common areas.[1]

The Tax Court below found, and the Assessor ostensibly agrees,[2] that "the assessment and valuation of real property is – and has always been – inherently subjective." *Muir Woods et al.*, 154 N.E.3d at 882 (citations omitted). While this is perhaps true of the Assessor's initial determination of the base rate, *see Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 878 (Ind. Tax Ct. 1993) (observing "[v]aluation questions call for subjective judgment"), this is not true with regard to application of the discount factor to homeowners' association land. That is, once the base rate is subjectively determined, common areas must be valued at twenty percent of the base rate. Whether a discount was applied is inherently objective: it was either applied or it wasn't.

The Assessor argues that the HOAs should have first filed Forms 130/131 to challenge the subjective determination of the properties' base rates. *See BP Amoco Corp.*, 820 N.E.2d at 1232-33, 1236-37 (explaining the use of Forms 130/131 and concluding the taxpayer could not challenge the methodology used to generate the assessment of certain property using Form 133). But focusing only on the narrow challenge before us today, we find the HOAs are challenging the objective application of a prescribed discount rate to an already-determined base rate. Therefore, Form 133 was a proper avenue to appeal this objective determination and, with respect to this issue, dismissal of the HOAs' petition before the Board was

[1] The valuation form for the Oakmont HOA simply noted "Pricing for common area is $0.90" without any specific reference to application of a discount. App. Vol. 6, p. 64.

[2] The Assessor declined to file a brief in response to the HOAs petition for review in our Court and did not directly confront this issue in its briefing before the Tax Court.

improper. *See* Ind. Code § 6-1.1-15-12(a) (2011) (listing objective determinations appealable via Form 133).[3]

Conclusion

We find Form 133 was a proper avenue to challenge the application of a discount to common land within the HOAs' property. We therefore reverse Section 2 of the Tax Court's opinion, summarily affirm the remainder of the Tax Court's decision, and remand this matter to the Indiana Board of Tax Review for further proceedings consistent with this and the Tax Court's opinion. *See* Ind. App. Rules 58(A), 63; *see also Muir Woods et al.*, 154 N.E.3d at 883 (remanding this matter to the Board on the issue of multiple taxation).

Rush, C.J., and Massa, Slaughter, and Goff, JJ., concur.

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[3] We also reject the Assessor's argument that the HOAs' consolidated Form 133 was untimely given a statutory change placing a three-year statute of limitations on filing these types of appeals. *See generally Hutcherson v. Ward*, 2 N.E.3d 138, 144 (Ind. Tax Ct. 2013) (explaining that a statutory change in 2000 lifted any time limitation for appealing property value assessments); *see also* H.E.A. 1266 (2014) (amending Indiana Code section 6-1.1-15-12 to require that a petition to correct error be filed within three years of when the taxes were first due). The HOAs filed the present action before this revised statute went into effect and received approval from the Board—without objection by the Assessor—to file a consolidated Form.